charged and tried again on an issue substantially dealt with in his previous trial. I also think that the essence of issue estoppel or *res judicata* is that the issues must be between the same parties. I do not think that the authorities cited by Che Hussein is an authority for saying that when an accused person has been convicted in a trial in which he denied the charge and gave evidence contrary to the evidence for the prosecution he would not be allowed to give the same evidence in another case where he was not a party. I would therefore dismiss this ground of appeal.

The last ground 4(vii) where he urged that the indent, the subject matter of the present charge, cannot be regarded to come within the words "other document" in section 4(c) of the Act. In my view the proper way of considering this point is to discover from the examination of the document itself what document it is.

I see that exhibit P.3 contained two parts namely:—

(i) An order or a request to the appellant to do certain work, the indent proper.

(ii) A certificate by the penghulu to the effect that the work had been done.

As I understand the charge against the appellant it was that second part which was the subject of the charge, namely to the effect that he had completed the work when in fact he had not done so. This part also authorized payment due for the work that had been done or supposed to have been done. In my view therefore it is not necessary to decide whether the words "other document" should be interpreted *ejusdem generis* or not because in my view, that second part of the document can be interpreted to come under the word "account". The gist of the offence is the falsity of that part namely by implication to the knowledge of the appellant that the work had been completed and subsequent order to pay $600 to the appellant. It is false because no work had in fact been done. For the above reasons I also dismiss this ground of appeal.

The appeal is dismissed and the conviction confirmed.

As to sentence Che Hussein asked me to consider as to the fact that the charge had been hanging over appellant for over two years and appellant had a clean record. For the prosecution Mr. Ajaib Singh referred me to the case of *R.* v. *Ng Ng Cheong Hock*,[4] where the court in that case held the view that in considering sentence the interests of justice and that of the public should be considered. In my own view in a case of this nature, unless there are very special reasons a sentence of imprisonment would be a proper one. In this case the sentence passed by the president was six months. In all the circumstances of the case I do not feel inclined to alter that. I would also dismiss the appeal against sentence.

Appeal dismissed.

Solicitors: *Skrine & Co.*

SHANGHAI HALL LTD. v. CHONG MUN FOO & ORS.

[O.C.J. (Raja Azlan Shah J.) November 16, 1966]

[K.L. — Civil Suit No. 1352 of 1965]

Company Law — Directors — Whether can have interest in rival company — Disclosure of rival interest — Inducing breach of contract by employees to benefit rival company.

Practice and Procedure — Statement of claim — Striking out — Whether cause of action was disclosed — R.S.C. O. 25, r. 4 — Amendment.

This was an application by the defendants to strike out the statement of claim under O. 25 r. 4 of R.S.C., 1957. The plaintiffs are an incorporated company carrying on the business of a restaurant and bar. The defendants, while being directors of the plaintiff company, promoted a rival company carrying on a similar business on the mezzanine floor immediately below the plaintiffs. The plaintiffs alleged breach of director's duty of disclosure of interests in the rival company. Paragraph 7 of the statement of claim alleged that the 1st defendant as managing director of the plaintiff company induced the staff of the plaintiffs to terminate their contracts of service with the plaintiffs and as a result about 25 employees of the plaintiffs resigned from their service. The articles of association of the plaintiff company did not prohibit its directors from becoming directors of a rival company but stipulated that a director must disclose the nature of any interest he may have in any contract or arrangement with any other company.

Held: (1) in the absence of a prohibition appearing in the regulations of the company a director of the company may become a director of a rival company. Since the articles of association of the plaintiff company had not prohibited its directors from becoming directors of a rival company and as the defendants had not entered into a business contract or arrangement with the plaintiff company they had not committed a breach of directors' duty;

(2) paragraph 7 of the statement of claim, though unhappily worded, disclosed the cause of action of procuring or inducing a breach of contract or interfering with contractual obligations against the first defendant. It also raised issues of fact which required to be determined on evidence and inferences therefrom by the trial judge;

(3) the action against the defendants based on paragraph 7 should proceed to trial with leave to amend the paragraph.

Cases referred to:—

(1) *Wenlock* v. *Moloney* [1965] 1 W.L.R. 1238 at 1243.

(2) *London and Mashonaland Exploration Co. Ltd.* v. *New Mashonaland Exploration Co. Ltd.* [1891] W.N. 165.

CIVIL SUIT.

Morris Edgar and *T. K. Tang* for plaintiffs.

Zain Azahari bin Zainal Abidin for defendants Nos. 1 and 2.

Eugene Lye for defendant No. 3.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application by the defendants to strike out the statement of claim under O. 25 r. 4. The principle to be applied is well established. If authority be needed for what may be considered as axiomatic, I need only refer to the recent case of *Wenlock* v. *Moloney* [1] where Danckwerts L.J. said:—

> "Under the rule (i.e. O. 25 r. 4) it had to appear on the face of the plaintiff's pleading that the action could not succeed or was objectionable for some other reason. No evidence could be filed . . . But, as the procedure was of a summary nature, the party was not to be deprived of his right to have his case tried by a proper trial unless the matter was clear".

The circumstances giving rise to the application are as follows. The plaintiffs are an incorporated company carrying on the business of a restaurant and bar in Kuala Lumpur. In September 1965, the three defendants, who were then the directors of the plaintiffs (the first defendant was also the managing director), promoted a rival company called Lu Kok Restaurant Ltd. carrying on similar business on the mezzanine floor immediately below the plaintiffs. The plaintiffs now allege that the defendants had not disclosed the nature of their interests in the rival company and they accordingly contend that the defendants were by their conduct fraudulent and constituted a breach of a director's duty towards the plaintiffs.

The only question to be determined here is whether a director of a company is prohibited from becoming a director of a rival company. The case of *London and Mashonaland Exploration Co. Ltd.* v. *New Mashonaland Exploration Co. Ltd.* [2] is in point. There it was held that in the absence of a prohibition appearing in the regulations of the company, a director is at liberty to become a director of a rival company. The paramount consideration in such a case as this is to consider whether the articles of association, which govern the arrangement of members *inter se*, contain any such prohibition. Article 94, which is the dominating provision for present purposes, is quite explicit and hardly requires discussion. Under that article, a director can hold office or place of profit under the company (of which he is a director) or under any other company in which the company is a shareholder. Secondly, a director can contract with the company as a vendor or a purchaser or otherwise and such contract or arrangement is not void. He is not liable to account in those circumstances. But the article stipulates that when such contract or arrangement is first considered at the directors' meeting, he must disclose the nature of his interest; in any other case at the first meeting of directors after the interest was acquired. If a director has already an interest in a contract or arrangement with the company he must make a disclosure at the first meeting of directors., In all those circumstances he has no right to vote for the simple reason that he is an interested party, but that prohibition may be suspended or released by a general meeting.

In my view the present facts as appearing in the statement of claim are not caught by the article (see paras. 3, 4 and 5). The defendants have not entered into a business contract or arrangement with the plaintiffs. Nor have they any interest in any contract or arrangement between the plaintiffs and the Lu Kok Restaurant.

It now remains to deal with the cause of action contained in paragraph 7 of the claim. It reads:—

> "On or about July 1965 the first defendant in the capacity of managing director of the plaintiff deliberately induced the staff of the plaintiff including the cooks, waitresses and waiters to terminate their contracts of service with the plaintiff. As a result of the first defendant's inducement about 25 employees of the plaintiff resigned from the service. The defendants offered to re-employ those resigned at a higher scale of salary with the object to cause further loss and damages to the plaintiff".

It was said on behalf of defendant No. 1 that the pleading does not disclose any cause of action for, as it stands, the 25 employees of the plaintiffs "resigned from service". From that, counsel wants me to infer that there was a lawful termination of service, it being settled law that if the termination of service is in itself lawful, no liability could be imputed to defendant No. 1. However, it is not within my province at this stage to enquire into that question. That has to be gone into by the trial judge after hearing evidence and drawing proper inferences from them. To my mind, paragraph 7 *supra* is unhappily worded. It is bad pleading. Nonetheless it discloses some cause of action, that is. procuring or inducing a breach of contract or interfering with contractual obligations. This is not a case of a servant leaving the plaintiffs' service but an exodus of twenty-five servants. There may be something in it. That is for the trial judge to decide. I therefore give leave to amend the said paragraph. It was submitted by counsel for defendant No. 1 that to allow that would be a substantial departure from the original cause of action as pleaded and therefore the rules of pleading would not permit such amendment. I do not agree with that proposition. In my view, there is no substantial departure from the original cause of action envisaged in paragraph 7.

In the circumstances defendant No. 3's application is allowed with costs.

With regard to the application of defendants

Nos. 1 and 2, I allow their application in the same way as that of defendant No. 3. In respect of that application concerning paragraph 7 of the claim, I hold that there is some cause of action disclosed. Here I will order no costs, and costs will be costs in the cause.

Order accordingly.

Solicitors: *T. K. Tang & Co.; Braddell & Ramani; Eugene Lye & Co.*

MAK KOON YONG & ANOR. v. MUNICIPAL COUNCILLORS, MALACCA

[O.C.J. (Wan Suleiman J.) January 4, 1967]

[Malacca — Civil Suit No. 37 of 1963]

Local Authority — Discretionary power — Improper exercise of — Refusal to pass amended plan — Whether ultra vires the Ordinance — Failure to have recourse to remedy specified in Ordinance — Municipal Ordinance (S.S. Cap. 133), s. 144.

Limitation — Suit against a body corporate — Protection afforded by Public Authorities Protection Ordinance, 1948, s. 2(a).

The plaintiffs are the registered owners of a piece of land situated within the municipal boundary. They alleged that in December 1960 the then municipal engineer informed their architect that the defendants had approved their application to erect 10 units of buildings shown on plan No. 8720, provided that septic tanks were re-sited. They alleged that the plan showed the front of the buildings to be of the ordinary dwelling house type, but the defendants contended that the plan as a whole showed that the buildings to be erected were of the dwelling house type.

It was common ground that the plaintiffs completed 7 of the 10 units shown on the plan, and that they departed from the passed plan when they constructed fronts of the ground floor of the buildings for use as shops closed by shutters and collapsible iron gates. The defendants contended that in departing from the original plan, the plaintiffs had altered entirely the nature of the user of the buildings.

In November 1961 the plaintiffs' architect submitted to the defendants plan No. 9322 showing departure from passed plan 8720 and in December 1961 the municipal engineer returned plan 9322 to the architect stating that the "application was refused as the proposed buildings were originally intended for dwelling purposes only, and conversion into shophouses necessitates provision of 20 ft. service road which is not possible." Plaintiffs then made a personal application to the President of the Municipal Council and their architect wrote to the municipal engineer in January 1962. The engineer replied stating that the defendants had already considered the plaintiffs' previous applications and that the waiver of a 20 ft. service road was not possible.

There followed various protracted correspondence, the engineer replying the matter was still "under consideration". Finally on May 21, 1962 the plaintiffs' solicitor wrote pointing out that they were suffering loss by the delay in finalising the issue. On June 27, 1962 the municipal engineer wrote to the plaintiffs' architect informing him that the "Councillors have approved the amendment as shown in the plan."

In this action the plaintiffs claimed, *inter alia*, "a declaration that the defendants' disapproval of amended plan No. 9322 to passed plan No. 8720 was wrongful and *ultra vires* and by maintaining their wrongful disapproval and wrongful or neglecting to approve the aforesaid amended plan despite repeated requests until 27th June 1962, had caused loss to plaintiffs, and also claimed general and special damages." The defendants contended that they acted at all material times reasonably and in *bona fide* exercise of their duties and powers as municipal councillors and they denied liability in damages.

The following issues of law were raised: (1) were the defendants acting *ultra vires* the Ordinance in refusing to pass plan No. 9322? (2) were the plaintiffs guilty of an offence under section 144 of the Municipal Ordinance when they departed from passed plan No. 8720 without the written permission of the municipal councillors and therefore could they claim damages in respect of and arising out of their illegal acts? (3) would plaintiffs, who have failed to have recourse to the remedy specifically provided by section 144 of the Ordinance be precluded from complaining against defendants or from claiming any damages which may arise out of their failure to pursue their proper remedy? and (4) was the action barred by limitation under the Public Authorities Protection Ordinance, 1948?

Held: (1) the defendants, in refusing to pass the amended plan, were acting *ultra vires* the Ordinance;

(2) there was no point in pursuing the second issue since it was clear that the plaintiffs' contention was that their cause of action arose out of the refusal to approve the amended plan;

(3) the answer to the third issue would also be the answer to the second issue;

(4) time would begin to run for the purposes of the Public Authorities Protection Ordinance from the time when the act was caused, not from the time when the injury or damage ceased, or in the case of a continuing injury or damage, when the act causing the injury or damage ceased. If the refusal to approve the amended plan by the defendants was actionable, there had indeed been a continuation of the act, and therefore the plaintiffs were correct in saying that the act causing damage ceased only from June 27, 1962. It followed that this suit was not time-barred. However in view of the answer to the third issue of law above, the fact that the suit was not time-barred could not affect the action;

(5) there was no cause of action and the suit was dismissed with costs.

Per curium: Even where the specific remedy provided is for failure to perform, or in this case the improper exercise of a discretionary power, the court would have to seek the intention of the legislature . . . the obvious intention is to exclude an actoin for damages.

Cases referred to:—

(1) *Pasmore & Ors.* v. *The Oswaldtwistle Urban District Council* [1898] A.C. 387.

(2) *Robinson* v. *The Mayor & Corporation of the Borough of Workington* [1897] 1 Q.B. 619.

(3) *Atkinson* v. *Newcastle & Gatehead Waterworks Co.* (1876-7), 2 Ex. D. 441; [1874-80] All E.R. Rep. 757.

(4) *Davis* v. *Bromley Corporation* [1908] 1 K.B. 170.

(5) *Asok Kumar David* v. *Abdul Cader* [1963] 3 All E.R. 579.

(6) *Carey* v. *Metropolitan Borough of Bermondsey*, 20 T.L.R.

CIVIL SUIT.

W. H. Sault for the plaintiffs.

Ng Ek Tiong (*Vincent Ponniah* with him) for the defendants.